

SETTLEMENT AND RELEASE AGREEMENT

N.G., etc. v. County of Los Angeles, et al.
USDC Case No. CV 13-04985-BRO (RZx)

1. Defendant, County of Los Angeles ("County") shall pay Plaintiff, N.G., by and through his Guardian Ad Litem, Rosa Maria Murillo, the sum of \$600,000 (Six Hundred Thousand Dollars) within ten weeks of approval of the settlement by the County Claims Approval Process on the following terms and conditions pursuant to a court approved minor's compromise:

(A) A check shall be issued to the Law Offices of Vicki I. Sarmiento ("Law Office") for attorney fees and costs.

(B) A check shall be issued to Rosa Maria Murillo, Guardian Ad Litem, to be placed in a blocked account.

(C) The sum of the checks issued pursuant to Paragraphs 1(A) and (B) shall total \$600,000.

(D) Plaintiff, via his Guardian Ad Litem, shall be responsible for any Medi-Cal and/or Medi-Care liens which were incurred as a result of the as a result of the claims set forth in USDC Case No. CV 13-04985. Plaintiff represents and warrants that he does not have a reasonable expectation of Medicare entitlement within 30 months of the settlement of this Action. Plaintiff agrees to release any right to bring any possible future action, at law, equity, ADR, or administrative proceeding under the Medicare Secondary Payer statute against County and/or its agents, employees, predecessors, successors, attorneys or assignees. Plaintiff and his attorneys agree to defend, indemnify and hold harmless County and its agents, employees, predecessors, successors, attorneys or assignees for any action, at law, equity, or arbitration proceeding for any loss of diminution of Medicare, or Social Security benefits, or any recovery the carriers for Medicare and Medicaid Services may pursue, including, but not limited to, recovery sought by Medicare for the past, present and/or future payments and/or liens.

2. In return, Plaintiff shall release any and all claims, known and unknown, against each of the parties, including any present or former officer, employee, agent, attorney (including predecessors, successors, heirs, and assigns) of the County, and any individual Defendants, including, but not limited to, Brian Young, Anthony Davis, Jerry Powers, Collie Simmons and Natally Meza, from any liability under any law governing any personal injury, tort, civil rights and negligence claims. Such release shall include a release of any right under Civil Code §1542, which states,

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

3. Plaintiff shall forthwith file a Notice of Settlement with the Court.

4. Each party to bear their own costs and attorney's fees.

5. Plaintiff is aware that this settlement is conditional upon County Claims Approval Process.

6. The parties will work together in good faith to create, execute and deliver a mutually acceptable and more complete settlement agreement and release of claims, in the absence of which this Settlement and Release Agreement will be binding and enforceable in all respects. The settlement agreement shall be completed and signed within 30 days of this date.

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7. The parties herein agree that they have reached a full and final settlement of all claims. This Settlement and Release Agreement is binding and it contains the material terms of the agreement between the parties and is enforceable under Code of Civil Procedure §664.6. Pursuant to Evidence Code §1123(a), the parties agree that this Settlement and Release Agreement is exempt from the confidentiality provisions of Evidence Code §1152, et seq. and is admissible in evidence to enforce the settlement.


Dated: 1/22/15


ROSA MARIA MURILLO, Guardian Ad
Litem for N.G. Plaintiff

Dated: 1/22/15


MARY ANNE O'DONNELL
Department of Mental Health
Clinical Risk Management
For Defendant County of Los Angeles

Dated: 1/22/2015


JACKLIN E. INJIAN
Los Angeles County Probation Dept.
Civil Litigation Unit/Risk Management
For Defendant County of Los Angeles

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (hereinafter "AGREEMENT") is made by and between Plaintiff, [REDACTED], by and through his Guardian Ad Litem ROSA MARIA MURILLO and his agents, attorneys, representatives, successors and assigns (Hereinafter collectively "PLAINTIFF") on the one hand and Defendants COUNTY OF LOS ANGELES, JERRY POWERS, BRIAN YOUNG, NATTALY MEZA, ANTHONY DAVIS, COLLIE SIMMONS and their agents, employees, attorneys, representatives, successors and assigns (hereinafter collectively "COUNTY DEFENDANTS") on the other, (PLAINTIFFS and COUNTY DEFENDANTS will be collectively referred as "SETTLING PARTIES") in connection with Case No. CV13-04985 BRO(RZx), entitled *N.G., by and through his Guardian Ad Litem, Rosa Maria Murillo v. County of Los Angeles et al.*

RECITALS

A. This action is brought by PLAINTIFF, who alleges that he was injured and that his civil rights were violated when on *June 19, 2012*, while a *Welfare & Institutions Code § 602* juvenile at Camp Afflerbaugh, and during transport to Central Juvenile Hall in a van, he was allegedly sexually assaulted and battered by other juvenile wards while under the supervision of ANTHONY DAVIS and COLLIE SIMMONS. PLAINTIFF further contends that he had made known both before and after the incident that he had been bullied and assaulted by the other juvenile wards and that COUNTY DEFENDANTS failed to adequately protect him and/or separate him from his other attackers both pre and post-incident.

B. On *July 16, 2013*, PLAINTIFF filed a Complaint in the United States District Court, Central District, Case No. CV13-04985 BRO(RZx). The current operative pleading is the Second Amended Complaint (SAC) filed on *December 23, 2013*, which asserts Four (4) separate claims, namely, (1) Violation of Civil Rights (42 USC 1983) vs YOUNG-MEZA-DAVIS-SIMMONS; (2) Municipal Liability for Civil Rights Violations vs. COUNTY; (3) Violation of Civil Rights for Failure to Train and Supervise (42 USC 1983) vs COUNTY-POWERS; and (4) Negligence/Breach of Statutory Duties vs COUNTY-YOUNG-MEZA-DAVIS-SIMMONS.

C. Following three separate mediation session with Mediator Nikki Tolt, a settlement

was finally reached between SETTLING PARTIES in the action.

NOW THEREFORE, in consideration of the foregoing promises set forth below, it is agreed:

1.0 **SETTLEMENT TERMS:** The settlement terms entered into between the SETTLING PARTIES on all pending matters are as follows:

- COUNTY shall pay PLAINTIFF the sum of Sixth Hundred Thousand Dollars (\$600,000.00) in full and final settlement of any and all pending claims made by PLAINTIFF in the Lawsuit;
- In exchange for said consideration PLAINTIFF shall waive and release any and all claims against COUNTY DEFENDANTS, which PLAINTIFF now owns, holds, has or claims to have, including a *Civil Code* Section 1542 waiver and dismiss his pending claims as to all defendants with prejudice;
- All settlement terms are subject to the COUNTY approval process;
- Payment of the settlement check by COUNTY to PLAINTIFF's attorneys shall be accomplished within Six (6) weeks of the approval of the settlement by the COUNTY Claims Approval Process;
- The settlement shall be subject to approval of a Minor's compromise;

2.0 **PAYMENTS BY COUNTY:** After execution of this AGREEMENT and approval of the settlement by the COUNTY approval process; and a minor's compromise, COUNTY shall issue a check or warrant payable as ordered pursuant to the minor's compromise; the total sum of which shall be in the amount of *Six Hundred Thousand Dollars* (\$600,000.00) in full and final settlement of any and all pending claims of PLAINTIFF that PLAINTIFF now owns, holds, has or claims to have against COUNTY DEFENDANTS. Said payment shall be transmitted to PLAINTIFF's attorneys within Six (6) weeks from the approval of the settlement by the Claims Approval Process and minor's compromise whichever occurs last.

3.0 **DISMISSAL OF COMPLAINT WITH PREJUDICE:** Within Ten (10) days of receipt of the settlement check by PLAINTIFF's counsel, PLAINTIFF, through his counsel, shall file a Stipulation to Dismiss the entire action with prejudice.

4.0 **RELEASE FROM ALL CLAIMS AND LIABILITIES:** Except for the liabilities and obligations arising out of this AGREEMENT, PLAINTIFF does hereby waive, release, acquit and discharge from the beginning of time, and in and for the future the COUNTY DEFENDANTS,

of and from any and all sums of money, accounts, claims, demands, contracts, actions, liabilities, debts, controversies, agreements, damages and causes of action (collectively hereinafter referred to as "CLAIMS") whatsoever, of whatever kind or nature, whether known or unknown, contingent or liquidated, suspected or unsuspected, which PLAINTIFF now owns, holds, has or claims to have against the COUNTY DEFENDANTS specifically, but not exclusively, and without limiting the generality of the foregoing, any and all claims, damages, demands and causes of action, known or unknown, contingent or liquidated, suspected or unsuspected, by reason of any matter or thing alleged or referred to, directly or indirectly, or in any way connected with or arising out of all or any of the matters, facts, events, occurrences, alleged or referred to in the litigation or as a result of his detention at Camp Afflerbaugh and any other facility and/or dealings with COUNTY DEFENDANTS, as set forth in the recitals herein. It is the specific and express intention that this AGREEMENT dispose of all of PLAINTIFF's claims as against the COUNTY DEFENDANTS from the beginning of time to the future, and that the waivers and releases provided in this paragraph and set forth in Paragraph 5.0 herein below shall constitute, be deemed understood and act as a full release of all past, present and future claims that may arise from the hereinmentioned matters and issues as set forth in the recitals hereinabove or alleged or referred to in the litigation.

5.0 **WAIVER OF CIVIL CODE SECTION 1542:** With respect to the specific subject matter of the releases set forth in Paragraph 4.0, above, PLAINTIFF hereby waives against COUNTY DEFENDANTS all rights under California *Civil Code* section 1542 which states in pertinent part as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

PLAINTIFF understands and acknowledges the significance and consequence of the specific waiver of section 1542 of the *Civil Code* along with the benefit and effect of *Civil Code* section 1542 and hereby assume full responsibility for any and all injuries, damages, losses, expenses and CLAIMS hereinafter incurred by the abovementioned disputes and/or CLAIMS.

6.0 **LIENS, MEDICARE/MEDI-CAL & INDEMNIFICATION:** PLAINTIFF and PLAINTIFF's attorneys warrant and represent that they will be responsible for paying any outstanding liens or claims for reimbursement or subrogation for medical expenses, wages loss

and/or disability benefits in this matter from the settlement proceeds. PLAINTIFF further warrants and represents that he does not have a reasonable expectation of Medicare entitlement within 30 months of the settlement of this Action.

6.1 **PLAINTIFF** agrees to release any right to bring any possible future action, at law, equity, ADR, or administrative proceeding under the Medicare Secondary Payer statute against **COUNTY DEFENDANTS**.

6.2 In the event that any action is brought on behalf of **PLAINTIFF** or in connection with any outstanding Liens against the **COUNTY DEFENDANTS** in connection with this settlement and/or **PLAINTIFF**'s CLAIMS in question, **PLAINTIFF** and **PLAINTIFF**'s Attorneys warrant that they will indemnify, defend and hold harmless the **COUNTY DEFENDANTS**, from any and all claims, damages, liabilities, obligations, costs, expenses, liens, suits, actions, or causes of action including any action at law, equity or arbitration proceeding for any loss of diminution of Medicare, or Social Security benefits, or any recovery the carriers for Medicare and Medicaid Services may pursue, including, but not limited to recovery sought by Medicare for the past, present and/or future payments and/or liens.

7.0 **ADVICE OF COUNSEL:** **PLAINTIFF** warrants and represents that the independent advice of legal counsel has been obtained by **PLAINTIFF** prior to signing this AGREEMENT. **PLAINTIFF** executes this AGREEMENT voluntarily, with full knowledge of its significance and with the expressed intention of extinguishing all obligations, except as expressly set forth herein.

8.0 **SUCCESSORS AND ASSIGNS:** **PLAINTIFF** understands and agrees that the agreements, undertakings, acts and other things done or to be done by **PLAINTIFF** in this AGREEMENT shall run to and be binding upon **PLAINTIFF** and his heirs, successors, executors, administrators and assigns.

9.0 **COMPROMISE OF DISPUTED CLAIMS:** **PLAINTIFF** understands and agrees that by payment of the settlement sums referred to in paragraphs 1.0; and 2.0 of this AGREEMENT, **COUNTY DEFENDANTS** do NOT admit any liability on their part, but that such settlement is the compromise of disputed claims and is made solely to avoid the cost and risk of continued litigation.

10.0 **ENTIRE AGREEMENT:** This document contains the entire AGREEMENT and understanding of the SETTLING PARTIES concerning the subject matter of this AGREEMENT, and supersedes and replaces all prior negotiations and agreements, written or oral. **PLAINTIFF**

acknowledges that no other party, agent, attorney, employee or representative of COUNTY DEFENDANTS has made any promise, or representation or warranty not contained herein. This is an integrated AGREEMENT.

11.0 *WARRANTY OF NO TRANSFER*: PLAINTIFF hereby represents and warrants that he has not heretofore assigned and transferred, or purported to have assigned or transferred to any person, firm or corporation whatsoever, any of the CLAIMS released under this AGREEMENT.

12.0 Each party shall bear its own costs and attorney fees incurred in this lawsuit.

13.0 This AGREEMENT shall be enforceable pursuant to California *Code of Civil Procedure* section 664.6 and construed pursuant to the laws of the State of California. The Court shall further retain jurisdiction over the parties to enforce the terms of this AGREEMENT.

14.0 This AGREEMENT may be executed in counterparts and shall be effective when fully signed.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AND RELEASE AGREEMENT AND FULLY UNDERSTAND IT.

DATED: March 4, 2015

By: 

DATED: March 4, 2015

By: 

ROSA MARIA MURILLO as Guardian Ad Litem for 

APPROVED AS TO FORM:


DATED: March 4, 2015

LAW OFFICES OF VICKI I. SARMIENTO

By: 

VICKI I. SARMIENTO, Esq.

Attorney for Plaintiff,

 by and through his Guardian Ad Litem, ROSA MARIA MURILLO

DATED: March 2, 2015

SEKI NISHIMURA AND WATASE

By: 

GILBERT NISHIMURA, Esq.

KARI KADOMATSU, Esq.

Attorney for Defendants,

ANTHONY DAVIS and COLLIE SIMMONS

DATED: March __, 2015

COLLINS COLLINS MUIR + STEWART, LLP

By: _____

TOMAS A. GUTERRES, Esq.

ERIN R. DUNKERLY, Esq.

Attorneys for Defendant

COUNTY OF LOS ANGELES; JERRY POWERS,

ANTHONY YOUNG; and NATTALY MEZA

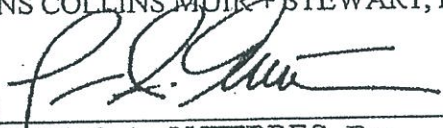
DATED: March __, 2015

SEKI NISHIMURA AND WATASE

By: _____
GILBERT NISHIMURA, Esq.
KARI KADOMATSU, Esq.
Attorney for Defendants,
ANTHONY DAVIS and COLLIE SIMMONS

DATED: March 2, 2015

COLLINS COLLINS MUTR + STEWART, LLP

By:  _____
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ANTHONY YOUNG; and NATTALY MEZA